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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

## No. 1268

**DELANO, INC.,**

*Petitioner,*

vs.

**WALTER C. ARNOLD,**

*Respondent.*

On Petition For Writ Of Certiorari
To The Supreme Court Of Illinois

## REPLY TO THE BRIEF OF RESPONDENT, WALTER C. ARNOLD IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## REPLY TO THE BRIEF OF RESPONDENT, WALTER C. ARNOLD IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent's brief is replete with inaccuracies.

In stating the alleged "facts", respondent claims both that a redemption was made on October 9, 1968 (within the time provided by statute) and that this amount was more than double petitioner's investment. Both assertions are untrue.

On October 9, 1968, the last day in which redemption could be made, (*Petition of Short*, 99 Ill. App. 2d 143, 241 N.E. 2d 216, 217), attorney for respondent attempted to redeem with a post-dated check. The trial court held that there was no redemption and that respondent's act of tendering a post-dated check was a nullity. No cross-appeal was taken from this portion of the trial court's order. Respondent's attempt to now assert as a fact that he redeemed within the redemption period should cause this court to examine his brief with a jaundiced eye.

Moreover, respondent states that the amount necessary to redeem was $5,262.38 although the amount originally bid at the sale for nonpayment of taxes was $2,425.99: respondent has attempted to create the impression that petitioner is doubling his money.

Again this is not factually accurate. Respondent has neglected to state to the court that in addition to the amount petitioner bid at the sale for nonpayment of taxes (which included taxes for several years) that petitioner also paid taxes for several subsequent years and advanced costs for filing the court suit and publication.

Since petitioner's advances for attorneys' fees, title searches and the cost of serving statutory notices are totally unreimbursed, its return on its investment would have been modest even if redemption had been made.

This is totally inapposite to the false impression respondent has attempted to create.

Basically respondent contends that petitioner acquired and held its interest subject to the possibility of eminent domain proceedings. Although this is true, the eminent domain proceedings affects the rights of the parties only

so far as is necessary to assure the sovereign's title. It does not affect the rights of the parties as between themselves. (*Forbis v. C. W. Hunter Co.*, (1939) 372 F. 2d 388, 391) Accordingly, the eminent domain proceedings, a legislative action, cannot change the rules in the middle of the game.

Since, as is pointed out in pages 9 through 11 of petitioner's original brief, it acquired certain vested rights at the time it made its purchase, those rights cannot be changed by subsequent legislative action, or in the instant case, by eminent domain proceedings.

In an effort to avoid this clear rule of law, respondent attempts to imply that because the Illinois legislature did not pass any statute narrowing the petitioner's rights there is no constitutional violation. However, in reaching this erroneous conclusion, respondent has totally ignored that portion of petitioner's original brief (pp. 7-9) which shows that eminent domain actions are legislative actions (*City of Chicago v. Pecarro*, 408 Ill. 387, 97 N.E. 2d 766, 771; *Forest Preserve of Cook County v. Wilke*, 3 Ill. 2d 49, 119 N.E. 2d 734, 737; *City of Chicago v. Albert J. Schorsch Realty Company*, ___ Ill. App. 2d ____, 261 N.E. 2d 711, 715). The failure of respondent to in any way contest this point is a tacit admission that the eminent domain action in the instant case was in fact a legislative action and subject to the constitutional proscription involved.

Respondent would also have this court believe that at Section 270 of the Illinois Revenue Act (Ill. Rev. Stat., Chap. 120, par. 751) was designed for the purpose of circumventing the strict redemption requirements under Section 263 of the Illinois Revenue Act as set forth in the petition for certiorari (pp. 10-11).

Section 270 of the Illinois Revenue Act is solely applicable to those situations where the tax deed or the tax sale certificate is imperfect and the court, in a collateral proceeding, is setting the deed or certificate aside. This section has nothing to do with the issues involved in this case and is not a substitute for those strict redemption requirements set forth in Section 263 of the Illinois Revenue Act. Moreover, the Illinois Supreme Court neither bases its decision on the section nor otherwise refers to it.

The opinion of the Illinois Supreme Court in the instant case effectively repudiates prior opinions of this court and violates petitioner's constitutional rights. It is therefore respectfully submitted that this court grant certiorari as prayed for in petitioner's original brief.

Respectfully submitted,

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*Attorney for Petitioner*